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OLC 78-2002/19

MR

13 October 1978

STAT MEMORANDUM FOR:

DDA

STAT FROM

Assistant Legislative Counsel/OLC

SUBJECT : Follow-up to 10 October 1978 "High One"
Phone Conversation

1. On 10 October 1978, we spoke with regard to the signing on 7 October 1978 by the President of H.R. 12598, the "Foreign Relations Authorization Act." I informed you that the President had signed the enrolled bill - containing as it does in section 406, the "high one" provision for State Department. I also indicated at that time that according to my White House and OMB sources, there is a signing statement involved, a copy of which I have sent to you under separate cover.

STAT 2. During our conversation, you mentioned that [redacted]
STAT [redacted] had spoken to a Mr. Rick Wise, State Department, who had indicated that another bill (not specifying number or status) may be in Congress which - if passed - would have the operative effect of nullifying the "high one" provision in H.R. 12598. My research into the matter confirms the information passed along by the State Department spokesperson.

3. I have attached and highlighted for your review the appropriate pages from the 21 September 1978 Congressional Record which deal with an amendment to the "Export-Import Bank Act." The amendment, introduced by Senator Inouye (D., Hawaii) and supported by the sponsors of the Senate version of the Export-Import Bank bill - Senators Heinz (R., Pa.) and Stevenson (D., Ill.), - had as its stated purpose:

"Repeal [of the] provision of the Foreign Relations Authorization Act for fiscal year 1979 permitting retirement for certain Foreign Service officers based on their 'high one' year of service."

As you will discover reading through the debate surrounding the amendment, Senator Inouye's amendment was adopted on the Senate floor.* However, the Senate version of the bill has not yet, as of this writing, passed the Senate. A House version of the Export-Import Bank bill - H.R. 12157 - passed the House on 27 July 1978 (Cong. Rec., daily ed., 27 July 1978, pages H 7408-7440). The House version contains no "high one" provision. If the Senate version were to pass the Senate, the inclusion therein of Senator Inouye's "high one" amendment would make the issue a conference consideration. Successful consideration through conference before the Senate adjourns on Saturday, 14 October, is highly unlikely. Moreover, pressure on the Senate to complete action on S. 3077 has been dissipated by House action of 10 October 1978 passing a joint resolution (H.J. Res. 1157) to permit the Bank to continue its work through 30 June 1979. (See 10 October Congressional Record attachment) It would appear, therefore, that the "high one" provision contained in section 406 of H.R. 12598, as signed by the President, is in effect until specifically repealed by some other law.

Attachments:
As Stated

STAT

*Note: To clarify Senator Heinz' motion to reconsider the vote and Senator Inouye's motion to lay on the table (see 2nd page of Congressional Record attachment): A motion to reconsider the vote by which an action was taken has, until it is disposed of, the effect of suspending the action. In the Senate, the motion can be made only by a member who voted on the prevailing side of the original question, or by a member who did not vote at all. A common practice in the Senate is a motion to reconsider, followed by a motion to table the motion to reconsider. On this motion to table, Senators vote as they voted on the original question, to enable the motion to table to prevail. The matter is then finally closed and further motions to reconsider are not entertained.

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EXPORT-IMPORT BANK ACT
AMENDMENTS OF 1978

The Senate continued with the consideration of the bill.

UP AMENDMENT NO. 1968

(Purpose: To extend the life of the Select Committee on Indian Affairs.)

Mr. ABOUREZK. I ask unanimous consent that it be in order to call up the Abourezk amendment to the Ex-Im bill. The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota proposes an unprinted amendment numbered 1968:

On page 16, line 5, insert the following:

Sec. 9. That notwithstanding section 105 (d) of S. Res. 4, Ninety-fifth Congress, agreed to February 4 (legislative day, February 1), 1977, the Select Committee on Indian Affairs shall remain in existence through January 2, 1981. This section shall take effect when agreed to by the Senate.

Mr. ABOUREZK. Mr. President, I ask unanimous consent that I may yield to Senator INOUE for 2 minutes for the purpose of offering another amendment, and that my amendment then be the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1968

(Purpose: Repeal provision of Foreign Relations Authorization Act for fiscal year 1979 permitting retirement for certain Foreign Service officers based on their "high one" year of service.)

Mr. INOUE. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. INOUE) proposes an unprinted amendment numbered 1968:

On page 16, after line 4, insert the following new section:

"Sec. 9. Section 406 of H.R. 12598 as enacted by the 96th Congress is repealed."

Mr. INOUE. Mr. President, a few days ago, the Congress adopted the fiscal year 1979 Foreign Relations Authorization Act. That bill contained a provision, section 406, which permitted Foreign Service officers to retire not on the traditional 3-year high basis but on the 1-year high. This amendment will repeal that section. The President is in favor of this amendment. I am afraid that if the amendment is not agreed to, the foreign aid authorization bill may be subject to a veto.

Mr. President, in 1887, the 2d session of the 49th Congress passed what was then regarded as the most extravagant of all pension bills. With no official estimate or statement of costs, the House, by a vote of 180 to 76—with 63 Members abstaining because they feared the wrath of an army of lobbyists—and the Senate, without even taking a rollcall vote, passed this so-called great pension grab.

In courageous defiance of those who threatened his political defeat, President Grover Cleveland vetoed the pension bill.

Then, with the onus of responsibility safely shifted to the shoulders of the President, the Congress did not attempt to override the veto. It cannot be said, of the Congress, that "this was their finest hour."

Mr. President, under the innocuous heading "Special Computation of Annuities," section 406 of the fiscal year 1979 Foreign Relations Authorization Act provides what has been termed an inducement to early retirement. I suggest that we call it what it is—"the great pension grab of 1978." It is a "golden handshake." It says to those who are lolling in the corridors of the Department of State, awaiting their time to retire, "leave now and we will fatten your retirement pay check." Mr. President, I oppose section 406.

What, specifically, does section 406 do? It provides significantly liberalized retirement benefits for Foreign Service officers whose salaries are now "capped" at \$47,500 and who elect to retire now. It would base retirement annuities for these Foreign Service officers, not on their highest 3 years of salary—not on the standard which applies to the whole Federal Government—but on the "high 1" year of salary.

Now, the Senate Foreign Relations Committee, in what has every appearance of "creative accounting," calculates, in its report to the Senate, that the net first year savings from this "1 year high" provision is \$4 million. I do not accept that figure. But more importantly, it is not the first year which is so significant. It is the total cost of this provision which, I submit, condemns it.

The administration which strongly opposed this provision has projected that the total cost might well rise to \$3.5 billion or \$200 million per year for each of the next 30 years. Some will say that this is an inflated figure because it assumes Government-wide application of the 1-year high. I would simply ask if there is anyone here who believes that, if we give this "golden handshake" to Foreign Service officers, others in the Federal Government will not demand it as well. Mr. President, in support of these calculations, I would ask that a strongly worded letter of opposition from the Secretary of State and a letter from the Director of the Office of Management and Budget detailing this cost projection be placed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. INOUE. Mr. President, these are the costs of the "pension grab." But, it may be asked, what is the purpose of section 406—what is it intended to accomplish?

Well, some argue that, by offering greatly increased retirement benefits to those who are otherwise eligible to retire, but who are merely biding time until they have a high 3 years salary, the superannuated employees of the Department of State, the Agency for International Development and the International Communications Agency will pack up and leave. President Cleveland, the pro-

genitor of the modern civil service system, regarded the retirement roll as an honor roll—as a means of rewarding years of service, not as a means of providing accelerated benefits to those who are not now earning their pay. He had the political courage to resist those who sought an easy, albeit costly, solution—and so should we.

Mr. President, I am not among those who believe that this "high-one" provision will help the Department of State, or the Agency for International Development, or the International Communication Agency to get rid of the "deadwood." To the contrary, I believe that those who leave early will be those who are vibrant and active and who will seek a second career; the "deadwood" will remain in place. I believe that contrary to its intended effect, section 406 will encourage the active to depart and, because it removes competitive pressures, it will reward the indolent, who, I assure you, are quite content to while away the day in their splendid offices overlooking the Potomac.

Mr. President, there is one final facet of section 406 which is never mentioned. I would suggest that, by temporarily easing the bulge at the top of the bureaucratic structure, it rewards the very agencies and departments which have pursued overly liberal promotion policies in the past. The Appropriations Subcommittee on Foreign Operations, which it is my privilege to chair, has found, for example, that the Agency for International Development has 48 percent of its Foreign Service officers in the top three grades and only 8.8 percent in the lower three grades. This situation is not going to be corrected by any one-time effort to provide an "easy-out;" it can only be corrected by the institution of rigorous and well considered personnel management practices. Section 406 will forestall the day when that occurs.

Mr. President, earlier in my remarks, I noted that in the 49th Congress, in 1887, the Senate passed a major pension bill without a rollcall vote. I believe, that we, in the 95th Congress should not emulate that timidity and faintness of heart. Let those who wish to aid and abet the "pension grab" of 1978 bring their proposal to the floor of the Senate for a recorded vote. This Senator will not oppose them, but I will also not shift the onus of responsibility to the President—I will vote "No."

Mr. President, I urge the deletion of section 406 of H.R. 12598.

EXHIBIT 1

THE SECRETARY OF STATE,

Washington, June 26, 1978.

HON. JOHN SPARKMAN,
Chairman, Foreign Relations Committee,
U.S. Senate.

DEAR MR. CHAIRMAN: Section 132 of S. 3076, the Foreign Relations Authorization Act for FY 1979, would authorize substantially larger retirement benefits for about 555 Foreign Service executives paid at supergrade-equivalent or Executive schedule rates (1) whose pay was previously frozen, and (2) who decide to retire between October 1, 1978 and December 31, 1979. Their annuities would be based on their highest single year's salary as opposed to their highest three year average salary. This would allow executives opting to retire early under

Pres. has signed the bill—we have not yet seen a copy of signing state-

the amendment to collect a portion of the additional annuity because of the early retirement.

The Administration strongly opposes this provision and, indeed, the President has personally expressed his disapproval to me. The Administration objects to section 132 for the following reasons:

One of its effects would be to compensate for a pay freeze with higher annuities. As you know, the President has decided to freeze executive pay, and the House has already passed implementing legislation. Enactment of section 132 would be contrary to the spirit of that policy.

Section 132, if enacted, could become an expensive precedent to extend similar benefits to "capped" Federal executives under Civil Service and other retirement systems.

Once adopted, this "high-one" provision might be sought each time there are extended pay freezes or in the event of large scale personnel reductions at all grades.

Further, enactment would result in strong pressures to extend this benefit to all Federal employees. Use of the "high-one" formula for all employees would be expected to increase greatly the number of retirements. At the extreme, if 75 percent of eligibles retired during the "high-one" period, the Civil Service Commission estimates liabilities would be increased by \$3.5 billion, requiring annual appropriations of roughly \$200 million a year for each of the next thirty years.

There is an increasing public belief that Federal retirement systems, including that of the Foreign Service, are very generous. Further liberalization at this time is inappropriate in view of the President's effort to control inflation by setting an example of restraint in expenditures for Federal services.

For these reasons, the Administration respectfully requests that section 132 of S. 3076 be deleted during Senate debate on the measure. Retention of this section may jeopardize Presidential approval of S. 3076.

The Office of Management and Budget advises that enactment of section 132 would not be in accord with the President's program.

Sincerely,

Cyrus Vance

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT
AND BUDGET

Washington, D.C., July 18, 1978.

Hon. JOHN J. SPARKMAN,
Chairman, Committee on Foreign Relations,
Washington, D.C.

DEAR MR. CHAIRMAN: Prior to the conference considering H.R. 12598, the "Foreign Relations Authorization Act, Fiscal Year 1979", I believe it important to emphasize the Administration's position on certain provisions of the Senate and House bills. The Department of State and the International Communication Agency will also state the Administration's position on a number of provisions.

I wish to re-emphasize the President's concern with section 407 of the House bill. That provision would significantly liberalize retirement benefits for Foreign Service officers whose salaries are now "capped" at \$47,500 and who elect to retire between October 1, 1978, and December 31, 1979. By basing annuities on the highest single year's salary, as opposed to the highest three years, the pension would allow retiring Foreign Service executives to receive approximately \$50,000 by retiring two years earlier. This in effect would be contrary to the principle of the executive pay freeze that the President has proposed and the House has approved.

If enacted, section 407 would become an expensive precedent for extending similar benefits to other "capped" Federal executives, including those under the Civil Service. Enactment would also lead to strong pressures

that Federal retirement benefits are already very generous. The additional benefits authorized by section 407 are certainly not consistent with the President's efforts to control inflation by restraining Federal expenditures as an example for the private sector to follow. The President has reviewed this matter in some detail and he is concerned about its precedent-setting nature and its budgetary impact. Retention of this section may jeopardize the President's approval of H.R. 12598.

There are other provisions that would weaken the President's ability to prepare his budget proposals or to contain budget costs and Federal employee compensation.

I respectfully urge that consideration be given to these Administration views in conference committee deliberations.

Sincerely,

JAMES T. McLESTER, Jr.,
Director

I have discussed this matter with the managers of the bill, Senator STEVENSON and Senator HEINZ, and both have agreed to accepting this amendment.

MR. STEVENSON. Mr. President, we have discussed the amendment. In my judgment, I know of no objection to it and have none myself. I am prepared to accept the amendment.

MR. HEINZ. Mr. President, that is correct. The administration does support this amendment and I am prepared to accept it.

MR. INOUE. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

MR. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

MR. INOUE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MR. HEINZ. Mr. President, I ask unanimous consent that Mr. Ralph Omar, of Senator MATIAS's staff, and Tony Cluff, of the Banking, Housing, and Urban Affairs staff, be granted the privilege of the floor during the consideration of the pending legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1983.

MR. ABOURETZ. Mr. President, the amendment which I have offered to the bill is simply the Rules Committee resolution which has been reported out of the Rules Committee by 11 think, a vote of 8 to 1, and, if not that, 7 to 1. It was an overwhelming majority. It would extend the life of the Indian Affairs Committee for 2 years. We have had it on the calendar for some time now and have not been able to get it called up, so I am forced to offer it this way.

I might say that it takes effect immediately upon passage by the Senate. I

object to this amendment by the Senate.

I should say I have discussed this matter with the managers of the bill and they totally disagree with it.

MR. STEVENSON. Mr. President, that is one statement by the Senator that is accurate. We do oppose this amendment.

It would, as the Senator did indicate, extend the life of the temporary Select Committee on Indian Affairs. In doing so, Mr. President, it would undermine the Senate's committee reorganization of last year.

The Indian Affairs Committee was approved by the Select Committee on Committees and by the Committee on Rules in the Senate with the firm understanding that there be no effort to extend it beyond its 2-year life. Its formation was proposed only because of the peculiar circumstances that existed in 1977 and 1978. These circumstances—namely, the extensions into the 95th Congress of the American Indian Policy Review Commission and the need for a panel in the Senate to oversee this Commission through a transition phase—will no longer exist in the 96th Congress.

Mr. President, if this amendment were to be approved, it would only serve to justify the cynical view of the Senate being incapable of standing behind its own reorganization when the pressures are off. It is true that the Committee on Rules has approved this amendment. Just last year, it disapproved the amendment when the Rules Committee, with the recommendation of the Committee on Committees, issued its recommendations for reorganization of the Senate, which were later, in the Senate, modified to include just a 2-year life for this committee.

This is the old story, it is history repeating itself. It is the history of a Senate that just cannot say no to every interest group and every Senator who wants a special committee established. It was because of that history and the proliferation of committees which resulted that the Senate undertook the most extensive reorganization of its committee system since that system was established in the early 19th century.

Now there is some danger of history beginning to repeat itself. All of these committees, over the years, get started as temporary committees. Then, when it comes time for them to go out of existence, the Senate just cannot say no to itself. It cannot say no to some Senator, cannot say no to some interest. So they get made permanent, with the end result that Senators have far more committee assignments than they can do justice by and the responsibility for issues is confused among many committees so that none receive any comprehensive attention by the Senate.

That is the irony of this amendment. Its purpose is to serve Indians. Its effect would be to disserve Indians. Indian affairs would be within the jurisdiction, without this amendment, of the new Human Resources Committee of the Senate, a standing committee of the Senate with the power and the authority to represent far more effectively the Indians in the

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their nomination have been passed by parliamentarians in Norway, Belgium, Great Britain, and most recently Canada. In addition, 11 members of our Commission on Security and Cooperation in Europe wrote the Nobel Institute in this regard.

On July 13, the Senate overwhelmingly adopted such a resolution that was co-sponsored by a bipartisan group of 58 Senators. Such action by the House would reiterate our commitment to the Helsinki accords, human rights, and freedom for those who have been so unjustly treated in the Soviet Union.

The resolution before the House, House Resolution 1372, expresses support of the House for the nomination for the 1978 Nobel Peace Prize of certain groups monitoring compliance of the Soviet Union with the human rights provisions of the Helsinki agreements.

As an original cosponsor of House Resolution 1372, which is identical to the Senate-passed version, I urge the full support of all my colleagues in the House in recognition of the brave men and women who have risked their lives for a free and peaceful world.

Mr. ZABLOCKI. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. ZABLOCKI) that the House suspend the rules and agree to the resolution (H. Res. 1372).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

EXPORT-IMPORT BANK ACT
AMENDMENTS

Mr. NEAL. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 1157) to amend section 8 of the Export-Import Bank Act of 1945.

The Clerk read as follows:

H.J. Res. 1157

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of the Export-Import Bank Act of 1945 is amended by striking out "December 31, 1978" and inserting in lieu thereof "June 30, 1979".

The SPEAKER pro tempore. Is a second demanded?

Mr. STANTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. NEAL) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. STANTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. NEAL).

Mr. NEAL. Mr. Speaker, I yield myself such time as I may consume.

(Mr. NEAL asked and was given permission to revise and extend his remarks.)

Mr. NEAL. Mr. Speaker, the Banking Committee has approved a continuing resolution (H.J. Res. 1157) to permit the Export-Import Bank of the United States to continue its work through June 30, 1979. Without this resolution, the Bank's authorization will expire on December 31, 1978.

As you know, the House approved on July 27 a full reauthorization bill, H.R. 1215, to extend the Eximbank through September 30, 1983, and to raise its credit ceiling from \$25 billion to \$40 billion. The Senate now has before it a similar bill, S. 3077, but that measure has been so loaded down with nongermane amendments, some of which are controversial that it seems unlikely that Senate action can be completed in time to permit a conference before adjournment.

In the event that no appropriate reauthorization bill can be enacted this year, we will need this continuing resolution to keep the Bank going. If we do not take this precaution, the Eximbank would be unable to function for a considerable time next year until the new Congress could act on a reauthorization bill.

In view of our trade deficit of more than \$30 billion a year and in view of President Carter's plan to use the Eximbank more aggressively in his new export promotion program, it would be unfortunate to have the bank immobilized for even a few months. Precious opportunities for sales abroad could be lost in this period.

It is regrettable of course that the Senate Eximbank bill has been bogged down by debate on unrelated amendments. But I recognize that some of these amendments deal with urgent and important matters. For example, one amendment approved by 56 to 21 in the Senate would exempt textiles from the multilateral trade negotiations at Geneva.

I am a cosponsor of the House version of the Senate textile amendment. I believe that it is an important and necessary measure. In fact, I only wish that this House had considered and passed the textile bill long ago, so that this issue would not have arisen so late in the session and at such a critical time in the GATT negotiations.

If any American product deserves to be taken off the negotiating table at Geneva, it is textiles. This industry, which employs nearly 2.5 million American workers, is particularly vulnerable to import competition. When developing nations industrialize, they turn first to production of textile products.

Over the years this country has been overly generous, I think, in our trade policies that have permitted these textile imports to penetrate the American market significantly. We certainly want an open world trading system. But there comes a time when we must see that our own interests receive fair consideration from others participating in the system. And there is strong evidence that textiles should not be required to sacrifice

any further in the tariff-cutting agreements at Geneva.

An estimated 400,000 textile jobs in the United States have been eliminated by import competition over the past decade. Textile and apparel imports are now rising so rapidly that, at present rate, may exceed 50 percent of the U.S. market by 1981. Our textile and apparel trade deficit during 1977 was \$3.4 billion; during 1978 it may be as much as \$4.4 billion. And all this has happened without the tariff cuts contemplated by the administration.

As I said, it is unfortunate that the House did not consider and pass earlier the measure introduced by Mr. HOLLAND of South Carolina and Mr. BROYHILL of North Carolina to exempt textiles from the Geneva negotiations. Timely passage of that bill would have spared us this late-session tangle over the important but unrelated Eximbank bill.

The only alternative now, however, is to continue the Eximbank with this resolution so that its important work in promoting the sale of American goods overseas will not be interrupted.

Mr. STANTON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. STANTON asked and was given permission to revise and extend his remarks.)

Mr. STANTON. Mr. Speaker, I rise in support of House Joint Resolution 1157, of which I am a cosponsor. The purpose of this joint resolution is to extend the life of the U.S. Export-Import Bank from the end of December to the end of June next year. The need for this continuing resolution arises because of the Senate's failure to pass the 5-year extension of the Bank which we passed months ago in the House by a vote of 314 to 47. This extension will enable us to consider "a renewal of Exim's charter early next year when time is not such a problem."

I urge my colleagues to support this resolution.

Mr. Speaker, I have no requests for time. I yield back the balance of my time.

Mr. NEAL. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. NEAL) that the House suspend the rules and pass the joint resolution (H.J. Res. 1157).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NEAL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution (H.J. Res. 1157) just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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